# BEFORE THE FEDERAL ELECTION COMMISSION

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# **GENERAL COUNSEL'S REPORT**

# I. BACKGROUND

This matter arises from a complaint filed with the Federal Election Commission

("Commission") against Frank G. Simon, M.D., founder and president of the Freedom's Heritage

Forum ("Forum"), a political committee, alleging that expenditures reported by the Forum as

independent were actually coordinated contributions to the Hardy for Congress Committee

("Hardy Committee") and the Lewis for Congress Committee ("Lewis Committee").

On July 18, 1995, the Commission found reason to believe that the Forum and Arthur Cerminara, as treasurer, violated 2 U.S.C. §§ 434(b); 434(c); 441a(a)(1)(A); and 441d(a)(3). On that date, the Commission also found reason to believe that the Hardy Committee and Bob Ross, as treasurer, and the Lewis Committee, and Bob Ross, as treasurer, each violated 2 U.S.C. §§ 434(a)(6)(A); 434(b); and 441a(f). Finally, on that date, the Commission also found reason to believe that Timothy Hardy and Richard Lewis each violated 2 U.S.C. § 441a(f) and further decided to take no action at that time with respect to Dr. Simon.

On March 19, 1996, the Commission authorized depositions in this matter to flesh out the coordination allegations. This Office has now concluded the bulk of its investigation and is submitting this report to resolve remaining issues before moving on to the next stage of the enforcement process.

In the General Counsel's Report dated June 24, 1996, this Office reported the taking of seven depositions as well as the conduct of informal interviews and notified the Commission of pending follow-up requests arising from the depositions. As a result of the depositions of Dr. Simon and Arthur Cerminara as well as information from disclosure documents, this Office now recommends that the Commission make reason to believe findings against Dr. Simon, as treasurer of the Forum. This Office also requests targeted subpoenas for materials we were unable to procure informally.

### II. **DISCUSSION**

### A. Dr. Frank Simon

Dr. Frank Simon, the founder and president of the Forum, has been listed as the "Custodian of Records" with the title of "Treasurer" on all Statements of Organization filed by the Forum. Attachment 1. Committee reports also reflect that until 1996, Dr. Simon prepared and signed all correspondence to the Commission pertaining to Forum reports, including responses to RFAIs addressed to Arthur Cerminara. Attachment 2.

In his deposition, Dr. Simon testified that, as the Forum's sole officer, he essentially runs the Forum, from his home or office, and that he directs Forum volunteers and controls Forum finances. Attachment 3, pp. 1-5, Transcript of Frank Simon's Deposition. Dr. Simon also testified that he is the only individual authorized to sign checks and make disbursements on behalf of the Forum. Id. at 12. Further, Arthur Cerminara testified in his deposition that he signs Forum reports at Dr. Simon's office and that he is not involved in the Forum's finances and does not prepare, fill out, or review any reports. Attachment 4, Transcript of Arthur Cerminara's

The complete transcript of Frank Simon's deposition as well as transcripts of all other deponents in this matter are kept in the Office of General Counsel's Docket Section.

Deposition. Based on the above, it appears that Dr. Simon, as the "Custodian of Records" with the title "Treasurer," has in fact been performing the underlying duties of treasurer.<sup>2</sup> Therefore, the findings previously made against the Freedom's Heritage Forum should also run against Dr. Simon, as treasurer. Accordingly, this Office recommends that the Commission find reason to believe Frank Simon, M.D., as treasurer, violated 2 U.S.C. §§ 434(b); 434(c); 441a(a)(1)(A); and 441d(a)(3).

## B. Subpoenas for Documents

During its investigation, this Office obtained a copy of a leaflet that was disseminated by the Hardy Committee. Attachment 5. The leaflet was put out immediately before the May 24, 1994 primary in response to an earlier mailing by Susan Stokes, the opposing candidate. The individual who provided this flyer stated that the mailings took place on May 19, 1994, or later and that Corley Everett, Timothy Hardy's campaign manager, told him that he had it reproduced at Kinko's downtown. This individual further stated that he thought it likely that 6,000 to 7,000 copies were reproduced and mailed and that he suspects Dr. Simon paid for the mailing because the Hardy Committee did not have any money at the end of the campaign.

It is not clear from the public record who the Freedom's Heritage Forum considers to be its current treasurer. Frank Simon submitted an amended Statement of Organization dated February 13, 1996, signed by Dr. Simon as "treasurer" but listing Bob Ross as the new treasurer of record. Attachment 1, p. 3. Since that date, Mr. Ross's signature has appeared on all Forum reports. Nevertheless, in a letter to the Commission dated April 16, 1996, advising of a change in the Forum's bank account, Dr. Simon references "Arthur Cerminara, Treasurer" as the point of contact for questions. Attachment 2, p. 7. In addition, Forum flyers continue to list Mr. Cerminara as "treasurer" of the Forum. Moreover, during the depositions, Mr. Cerminara thought that he was still treasurer of record while Mr. Ross stated that he thought he became treasurer of record in January 1996. The Reports Analysis Division still considers Mr. Cerminara treasurer of record on the basis of Dr. Simon's April letter. The confusion described above further underlies the fact that Dr. Simon is still the individual who controls Forum's finances, who makes all the decisions regarding Forum deposits and disbursements, and who is appropriately named as treasurer.

The Hardy leaflet had bulk mailing permit number 771. Postal Service records reveal that this permit was issued to Toby Tours, Inc., d.b.a. Toby's Travel Club, Inc. ("Toby"), a Louisville, Kentucky business. A review of the mailing activity for Toby between the period of March 1, 1994 through May 30, 1994, shows that in nine instances, the date and amount deposited for particular Toby mailings match the dates and amounts recorded in the Hardy Committee's reports as payments for postage. Attachment 6. This suggests that the Hardy Committee used Toby's bulk permit for all its mailings. The only discrepancies are for the May 18, 19, and 20 entries just prior to the May 24, 1994 primary election. The Toby entries reveal that 909 pieces were mailed on May 18, 1994, for \$114.70; 1,505 pieces were mailed on May 19, 1994, for \$222.74; and 9,753 pieces were mailed on May 20, 1994, for \$1,447.34. By contrast, Hardy Committee records show a \$200 disbursement for postage on May 18, 1994, and a \$300 disbursement on May 20, 1994, suggesting that someone else, perhaps Dr. Simon, paid for the balance. Based on the above, this Office recommends that the Commission issue a subpoena to Toby for its mailing records during the period of the Hardy campaign activity. Attachment 7.

Bob Ross submitted a "Ready-File" of the record he kept as treasurer for the Hardy

Committee. These records include copies of two cashier's checks, totaling \$900, as contributions
to the Hardy Committee from Dr. Simon. Attachment 8. The first check is dated January 6,
1994, and is for \$500, and the second check is dated February 10, 1994, for \$400. At his
deposition, Dr. Simon questioned whether he issued these checks because his name does not
appear on the first check and is typed in on the second check. Dr. Simon was asked why he
would use cashier's checks and from which accounts the checks would have been issued. He
replied that he would have probably withdrawn the money from his savings account to purchase
those cashier's checks because he does not carry enough funds in his checking account. These

checks are highly significant because the first \$500 check apparently was the first deposit that opened the Hardy for Congress Committee campaign's bank account. Attachment 9. Given the unusual nature of these contributions, Dr. Simon's questioning of the source of the checks, and our inability to secure the requested documentation through informal means, this Office recommends that the Commission issue bank subpoenas to identify who purchased the cashier's checks, whose funds (Forum, Simon, or other) were used to purchase the checks, and who endorsed the checks. This Office recommends that the Commission issue Subpoenas for the Production of Documents to the Fifth Third Bank, the Stock Yards Bank and Trust Company, and the PNC Bank.<sup>3</sup> See Sample Subpoena to Financial Institution at Attachment 10. The Subpoena to the Stock Yards Bank will also request Hardy campaign bank statements and documentation for the month of May 1994, as this is the only monthly statement missing from Bob Ross's Ready Book, supra page 4, and information about the Hardy campaign's financial activity in late May is relevant to the source of the payments for the last minute Hardy mailing also discussed above. Similarly, the PNC and Fifth Third subpoenas also seek to determine if the large last minute Toby postal payment came from Dr. Simon or the Forum's accounts. Last, with regard to the subpoenas pertaining to Dr. Simon's accounts, because the Commission is required to comply with the Right to Financial Privacy Act, 12 U.S.C. § 3401-3422, this Office

The Fifth Third Bank, formerly the Cumberland Federal Savings Bank is the bank that issued the cashier's checks and where Dr. Simon testified he has an account. The Stock Yards Bank and Trust Company is the bank where the cashier's checks were deposited and where the Hardy Committee has its accounts. The PNC Bank is the bank where where Dr. Simon told us he also has an account and where the Forum had its account (in his April 1996 letter, Attachment 2, p. 7, Dr. Simon informed the Commission that the Forum this year switched its accounts from the PNC Bank to the Fifth Third Bank).

recommends separate subpoenas to the PNC Bank and the Fifth Third Bank -- one for documents from Dr. Simon's accounts and one for the other documents.

# III. RECOMMENDATIONS

- 1. Find reason to believe that Frank Simon, M.D., as treasurer, violated 2U.S.C. §§ 434(b); 434(c); 441a(a)(1)(A); and 441d(a)(3).
- 2. Approve the appropriate letters, the attached Factual and Legal Analysis, the attached Subpoena for the Production of Documents to be sent to Toby Tours, Inc., and bank subpoenas to the Fifth Third Bank, the Stock Yards Bank and Trust Company, and the PNC Bank.

Date

Lawrence M. Noble
General Counsel

### **Attachments**

- 1. Statements of Organizations, Freedom's Heritage Forum
- 2. Forum Correspondence
- 3. Excerpts from Transcript of Frank Simon's Deposition
- 4. Excerpts from Transcript of Arthur Cerminara's Deposition
- 5. Hardy Leaflet
- 6. Bulk Mailing Permit Activity -- Toby's Travel Club Hardy Committee -- Record of Disbursements for Postage
- 7. Subpoena for Documents to Toby Tours, Inc.
- 8. Cashier's Checks
- 9. Bank Form (Opening Account/Hardy for Congress Committee)
- 10. Sample Subpoena to Financial Institution
- 11. Factual and Legal Analysis (Simon)

Staff Assigned: Dominique Dillenseger

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Page of 7

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2/4/93

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ATTACHMENT 2 E

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Frank firm

ATTACHNEST 2
Page 3 of 7

July 1. 1994 Jul 7 11 01 M 'S4

Federal Election Commission 999 E Street NW Washington, D.C. 20463

### Dear Commissioners:

04420350

This report covers the time period from the date we filed our Statement of Organization on February 23, 1994 through June 30, 1994. It is the only report we have made this year, but should be considered our second quarter report. We did not file a report at the end of March because there was almost nothing to report.

From conversation with one of the telephone answering people at the Election Commission office recently, we now understand that quarterly reports should be made whether or not there is much activity, and we will do so in the future.

We appreciate the helpful attitudes and information of those we have talked with by phone when we have called the office. Please commend them for us.

Sincerely,

Frank G. Simon, M.D.

ATTACHMENT 2
Page 4 of 1

10/8/94

Dear J. P,

This letter is in follow of to our plane conversation but week. I am enclosing the forms you requested. Our expenditures were not made in cooperation of any condition

Sorry we are late, so I mentioned on the plane, we had to send the same form to the FEC Beneral Counsil office and I didn't realise you were requestion them too.

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President of Jerm 400

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Page 5 of 1

# Freedoms Heritage Forum P.O. Box 6689 Louisville, Ky. 40206



Fax (502) 84-24-24 1 15

Mr. Jordan Frame Federal Election Commission 999 E Street, N.W. Washington, DC 20463

April 11,1995

Mr. Jordan Frame,

895-6263

I am writing you in follow up to our phone conversation today. We are a small organization and have no administration expenses such as rent, etc. because we primarily depend on volunteers.

We will get a report from our CPA as soon as possible.

Sincerely

Frank G. Simon

ATTACHMENT 2.
Page (O of 7



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Freedom's Heritage Forum P. O. Box **3090** Louisville, KY **40257** 

April 16, 1996

Federal Election Commission 999 E Street NW Washington, DC 20463

RE: C00290304

To Whom It May Concern,

The Freedom's Heritage Forum Federal PAC is no longer using Citizens Fidelity Bank A
PNC Bank, Account:

It has changed to Fifth Third Bank Account

If you should have any questions regarding this matter, please contact Arthur Cerminera, Treasurer at P. O. Box 8090.

Sincerely,

Frank G. Simon, MD

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ATTACHMENT

Page\_

# Susan Stokes Has Slandered My Husband In Order To Avoid The REAL Issues

Fellow Republicans, don't succumb to the politics of fear

U. S. Postage
PAID
Permit # 771
Louisville, KY

# A Personal Message From Jan Hardy

Wife Of Congressional Candidate, Tim Hardy

NANCY R KIMBERLIN
LOUISVILLE, KY 40205

Paid for by the Hardy For Congress Committee, Bob Ross CPA, Treasurer

Bulk mailing permit #771 was issued to TOBY TOURS, INC., d.b.a. TOBY'S TRAVEL CLUB, 145 Carter Avenue, Louisville, KY 40229 (telephone number 502-955-8680) on December 3, 1984 and is still assigned to TOBY's Travel Club (TTC) according to US Postal Service records.

Below is the mailing activity for TTC between March 1, 1994 and May 30, 1994:

Date	Pieces Mailed	Pounds	Withdrawal	Deposits	Balance
03-14-94	462	14.7378	\$ 68.38	\$ 184.71	\$ 153.49
03-14-94	786	25.1520	\$ 116.33		\$ 37.16
03-15-94	221	7.2930	\$ 32.71	\$ 32.71	\$ 37.16
03-17-94	1,000	32.0000	\$ 148.00	\$ 148.00	\$ 37.16
03-18-94	1,050	33.7050	\$ 155.40	\$ 155.40	\$ 37.16
03-22-94	806	25.7920	\$ 119.29	\$ 198.62	\$ 116.49
03-22-94	536	17.3128	\$ 79.33		\$ 37.16
03-29-94	245	82.7120	\$ 66.21	\$ 66.21	\$ 37.16
04-08-94	1,030	39.6550	\$ 152.44	\$ 152.44	\$ 37.16
04-12-94				\$ 85.40	\$ 122.56
04-12-94	2,063	66.6349	\$ 305.32	\$ 220.00	\$ 37.24
04-18-94	479	15.4717	\$ 74.82	\$ 74.82	\$ 37.24
04-22-94	213	72.5691	\$ 60.70	\$ 60.70	\$ 37.24
05-09-94	3,275	106.4375	\$ 484.70	\$ 484.70	\$ 37.24
05-16-94	1,381	39.9109	\$ 204.39	\$ 204.39	\$ 37.24
05-18-94	909	28.9971	\$ 134.53	\$ 114.70	\$ 17.41
05-19-94	1,505	15.3510	\$ 222.74	\$ 222.74	\$ 17.41
05-20-94	9,753	107.2830	\$1,447.34	\$1,447.34	\$ 17.41

ATTACHMENT 6
Page of 4

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04.30/94	J. LANGSAM	C/R B	(25.00)
05/03/94	J. WILLIAMS	C/R 4	(50.00)
05/05/94	L. BOMLES	C/R 1	(50.00)
05/05/94	R. GRIGGS	C/R 2	(5.00)
05/06/94	S. ELINE	C/R 3	(500.00)
JS/09/94	D. MICHELS	C/R 6	(100.00)
05/10/94	L. PERKINS	C/R 4	(50.00)
03/10/94	P. WHISHAN	C/R 5	(10.00)
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25/02/94	SPALDING WIRE	C\N 132	185.50
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92/23/94	U. EVERETT	C/D 106	150.00
<b>3</b> 3/18/94	C. EVERETT	C/D 112	320.00
04/01/94	C. EVERETT	C/D 118	160.00
04/15/94	C. EVERETT	C/D 125	160.00
04/19/94	C. EVERETT	C/D 129	160.00
04/28/94	C. EVERETT	C/D 133	160.00
05/09/94	C. EVERETT	C/D 138	160.00
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03/28/94	POSTMASTER	C/D 117	158.00
04/12/94	POSTMASTER	C/D 120	<b>305.</b> 40
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05/09/94	POSTMASTER	C/D 137	484.70
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			960.00
	UPPLIES - OFFICE		0.00
02/01/94	BANK CHEE - CHECKS	C/D 1	71.50
03/14/94	M. GAPEN	C/D 109	55.10
03/23/94	OFFICE DEPOT	C/D 115	63.05
			189.62
	UPPLIES - OTHER	•	0.00
04/19/94	L.L. WIRE	C/D 128	185.50
04/27/94	GORDON GRAVES	C/D 131	42.00
			227.50
	ELEPHONE		0.00
. 02/10/94	SCS	/ C/D 102	365.00
04/08/94	<b>SCS</b>	C/D 119	100.00
04/12/94	<b>SC9</b>	C/D 121	250.70
04/13/94	LDDS	C/D 124	63.20
05/05/94	8C9	C/D 2	213.30
			992.20
841 TI	ravel		0.00
			ATTACHMENT 6
		•	Danie 3
		4	Page 3 of 4

HAPDY FOR CONGRESS

Acct/Date	Description	Source/Ref	Amount
601	ADVERTISING		2,175.00 +
601	ADVERTISING.	[Continued]	•
05/01/94	VIDEO & MORE	C/D 4	B,000.00
05/02/94	SPALDING WIRE	C/D 135	195.50
05/16/94	SPALDING & DAY WIRE	C/D 139	37.10
			10,397.60 **
630	CASUAL LABOR		1,280.00 *
05/09/94	C. EVERETT	C/D 138	160.00
			1,440.00 **
e <del>S</del>	FILING FEES		500.00 •
4			500.00 -
<del>7</del>	LEASE EXPENSE		127.23 +
<b>.</b>			127.23 **
76	LODGING		0.00 •
305/02/94	HOLIDAY INN	C/D 136	157.59
4		0,2 102	157.59 **
74	POSTAGE		1,257.66 *
<b>Q</b> 5/09/94	POSTHASTER	C/D 137	484.70
05/16/94	POSTHASTER	C/D 140	204.39
85/18/94	POSTMASTER	C/D 141	200.00
05/20/94	POSTHASTER	C/D 142	300.00
		5.5 5.5	2,446.75 **
<b>791</b>	PRINTING COST		1,426.02 +
			1,426.02 **
792	PARKING		0.00 +
05/02/94	CASH - PARKING	C/D 1	9.00
			9.00 **
810	RENT EXPENSE		· 960.00 +
			960.00 **
825	SUPPLIES - OFFICE		189.65 *
			189.65 **
626	SUPPLIES - OTHER		227.50 *
			227.50 **
840	TELEPHONE		77 <b>8.9</b> 0 +
05/05/94	SCS	C/D 2	213.30
,			992.20 **
		100 m m m m m m m m m m m m m m m m m m	
0049-01	HARDY	FOR CONGRESS	ATTACHMENT
07/25/94 2:04 PM		per Listing - Detail Priod ended May 31, 1	Page of Adjusted